

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

ANGELO GULARAS, Claimant of One McLaughlin Touring Automobile, Serial Number 514,874, Engine Number 487,067, British Columbia License Number 17,893,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Northern Division.

FILED

JUN 8 - 1922

F. D. MONCKTON,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

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336 New York Building, Seattle, Washington.

J. D. McPHEE, Esq., Barrister and Solicitor, Attorney for Claimant and Appellee Angelo Gularas, Vancouver, B. C., Canada. [1*]

United States District Court, Western District of Washington, Northern Division.

November Term, 1920.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number, 17,-
893.

*Page-number appearing at foot of page of original certified Transcript of Record.

Libel of Information for Forfeiture.

To the Honorable JEREMIAH NETERER,
United States District Judge, in and for the
Western District of Washington, Sitting in Ad-
miralty in the Northern Division.

The libel of informaion of Robert C. Saunders,
United States Attorney for the Western District of
Washington, who prosecutes in this behalf for the
United States, and in the name of the United
States, against that certain McLaughlin Touring Au-
tomobile hereinafter fully described, its apparel, ac-
cessories, equipment and appurtenances, in a certain
cause of seizure and forfeiture, civil and maritime,
alleges:

I.

That the McLaughlin touring automobile herein-
above mentioned, is merchandise, to wit: an automo-
bile manufactured at Oshawa, in the Province of On-
tario, Dominion of Canada, and that it is identified
and described by the serial number thereon, to wit:
number 514,874, and by engine number 487,067, and
by a certain license issued by the Province of British
Columbia, being B. C. License Number 17,893; and
that at all the times hereinafter mentioned the said
automobile, together with its equipment, accessories,
apparel and appurtenances, [2] was owned by
persons unknown, residents of the Dominion of Can-
ada.

II.

That heretofore, to wit, on or about the second day
of October, 1920, one Jim Roberts, *alias* John Doe

Rogers, did then and there fraudulently and knowingly import and bring into the United States from a foreign country, to wit, from British Columbia in the Dominion of Canada, and assisted in importing and bringing into the United States, and into the Customs Collection District of Washington, and to and into the Northern Division of the Western District of Washington, and to and into the jurisdiction of this court, certain merchandise, to wit, the aforesaid McLaughlin Automobile hereinbefore more specifically described, together with the equipment, accessories, apparel and furniture thereof; and that at the time of the bringing in and importing of said automobile in the manner and at the time and place aforesaid, the said Jim Roberts, *alias* John Doe Rogers, did not report the arrival of said automobile into the United States, or make any entry of such arrival with the proper customs officers of the said Customs Collection District, or with any customs officer whomsoever, and did not pay or secure to be paid the customs duties due and assessable and payable by law upon the said merchandise, which said customs duties had not been theretofore paid or secured to be paid to the United States.

III.

That heretofore, to wit, on or about the date last mentioned, in the county of Whatcom in the Western District of Washington, Northern Division, and within the jurisdiction of this court, and within the Customs Collection District of Washington, one Jim Roberts, *alias* John Doe Rogers, did fraudulently and knowingly receive, conceal and transport,

[3] and aid and assist in the receipt, concealment and transportation, of certain merchandise, to wit, the said McLaughlin Touring Automobile hereinabove described, together with its equipment, accessories, apparel and furniture, knowing the said merchandise to have been imported into the United States contrary to law, the said merchandise having theretofore been imported and brought into the United States from a foreign country to wit, from British Columbia aforesaid, without declaration of entry thereof at any customs office, and without any payment of the customs duties assessable by law upon said merchandise, and without the securing to be paid of the customs duties aforesaid.

IV.

That at all the times hereinabove mentioned, the said merchandise above described, to wit, the said McLaughlin Touring Automobile, together with its equipment, accessories, apparel and furniture, was subject to the payment of customs duties, under the laws of the United States.

V.

That thereafter, to wit, on or about the 6th day of November, 1920, the said merchandise hereinabove described, to wit, the said McLaughlin Automobile, together with its equipment, accessories, apparel and furniture, was seized by the Deputy Collector of Customs of the United States, at Sumas, in Whatcom County aforesaid, and ever since said time has been and is now in the custody of the Collector of Customs for the Customs Collection District of Washington, and that the said merchandise has been

and is appraised by the customs officers of the said Customs Collection District, at the sum or value of seventeen hundred dollars (\$1700.00).

VI.

That all and singular the premises are true and within [4] the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, the said United States Attorney prays that process in due form of law according to the course and practice of this Honorable Court in causes of information for forfeiture and of admiralty and maritime jurisdiction may issue against the said merchandise, to wit, the said McLaughlin Touring Automobile, its equipment, accessories, apparel and appurtenances, and that all persons having any interest therein may be cited to appear and answer the premises, and that this Honorable Court may be pleased to decree that the said McLaughlin Touring Automobile, together with its equipment, accessories, apparel and appurtenances, may be condemned and forfeited to the United States, according to the form of the statute in such case made and provided.

ROBERT C. SAUNDERS,

United States Attorney.

R. E. CAPERS,

Assistant United States Attorney.

United States of America,
Western District of Washington,
Northern Division,—ss.

R. E. Capers, being first duly sworn, on his oath deposes and says: That he is Assistant United States Attorney for the Western District of Wash-

ington, and makes this verification for and on behalf of libellant herein; that he makes this libel for and on behalf of the United States of America; that he has read the foregoing libel of information for forfeiture, knows the contents thereof, and the same is true as he verily believes.

R. E. CAPERS.

Subscribed and sworn to before me this 26th day of November, 1920.

S. E. LEITCH,

Deputy Clerk, U. S. District Court, Western District of Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 26, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [5]

United States District Court, Western District of Washington, Northern Division.

November Term, 1920.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,067,
British Columbia License Number 17,893.

Appearance of Angelo Gularas.

To the Plaintiff Above Named and to Honorable ROBERT C. SAUNDERS, United States Attorney, and Honorable R. E. CAPERS, Assistant United States Attorney.

You and each of you will please take notice that Angelo Gularas has an equity in the McLaughlin Touring Automobile above mentioned, to the extent of two thousand dollars (\$2000.00), or thereabouts.

You will further please take notice, that we do hereby enter our appearance for said Angelo Gularas and do hereby appear for him in the above-entitled and numbered libel.

All notices, papers, etc., may be served upon us at our office #336 New York Block, Seattle, Washington.

COLE and DOLBY,
Attorneys for Angelo Gularas.

Received copy Jan. 17, 1921.

ROBT. C. SAUNDERS,
By E. D. DUTTON.

[Endorsed]: Filed in the U. S. District Court, Western District of Washington, Northern Division. Feb. 16, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [6]

United States District Court, Western District of
Washington, Northern Division.

November Term, 1920.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
077, British Columbia License Number 17,-
893.

Answer to Libel of Information for Forfeiture.

To the Honorable JEREMIAH NETERER, United
States District Judge, in and for the Western
District of Washington, Sitting in Admiralty
in the Northern Division.

Comes now Angelo Gularas, the owner of the Mc-
Laughlin Touring Automobile above mentioned and
answers the libel of information for forfeiture
herein as follows:

I.

Said Angelo Gularas avers, alleges and shows to
this Honorable Court that he was at the time of the
seizure of said automobile the owner of an equity
in said automobile and that since the seizure of the
same, as in said libel set forth, he has become the
absolute owner thereof, and that he deraigns his
title thereto as follows:

That on July 17, 1920, at Vancouver, B. C., he entered into a contract in writing with one Alfred Swanson for the purchase of said automobile agreeing to pay therefor the sum of \$2800.00, in installments upon certain dates all of which was more fully set out in said contract, a copy of which is hereto attached, marked Exhibit "A," and made a part and portion of this answer by reference, the same as though set out *in haec verba*, and immediately follows. [7]

II.

Answering paragraph I, thereof, this answering defendant denies that said McLaughlin Touring Automobile in said libel mentioned is merchandise, and admits the remaining portion of said paragraph.

III.

Answering paragraph II thereof, this answering defendant states that he admits all of said paragraph, save and except he denies that said automobile is merchandise and he believes said Jim Roberts *alias* John Doe Rogers, did fraudulently bring said car into the United States as alleged in said paragraph.

IV.

Answering paragraph III thereof, this answering defendant states that he admits all the allegations of said paragraph save and except he denies that said automobile is merchandise and he believes that said Jim Roberts, *alias* John Doe Rogers, did fraudu-

lently and knowingly commit the acts in said paragraph referred to.

V.

Answering paragraph IV thereof, this answering defendant states he denies that said automobile is merchandise and believes that the remaining portions of said paragraph are true.

VI.

Answering paragraph V thereof, this answering defendant denies that the said automobile was or is merchandise and as to the remaining portions of said paragraph, he believes the same to be true.

VII.

Answering paragraph VI thereof, this answering defendant believes the same to be true, except as hereinafter stated. [8]

Further answering said libel this answering defendant states:

I.

That on July 17, 1920, he entered into a contract with one Harry Sherman to purchase from this answering defendant said automobile, which said contract was in writing and the terms of payment and conditions of said contract being fully set forth therein, a copy of which said contract of sale is hereto attached, made Exhibit "B," and made a part and portion of this answer by reference the same as though set out *in haec verba* and immediately following, and that said Sherman immediately took possession of said automobile under and pursuant to the terms and conditions set forth in said

Exhibit "B," that he would keep and continuously use said automobile as a taxicab and for that purpose only and that it was understood and agreed that said automobile should be used as a taxicab in Vancouver, B. C.

II.

That defendant alleges and states upon information and belief that instead of Sherman using or causing to be used said automobile for taxicab purposes only in and about the city of Vancouver, B. C.; that the same was used at the time of seizure as set forth in the libel herein, for transporting whiskey and liquor from British Columbia into the United States and that at the time said automobile was so seized that it was seized by the sheriff or authorities of Whatcom County, Washington, after said automobile had crossed the International boundary line from British Columbia, into the United States and that when said car was so seized as aforesaid it had therein and there was being transported from British Columbia into the United States, thirteen gunny sacks filled with bottles of Canadian whiskey and that after the seizure of said [9] car and said whiskey by the authorities of Whatcom County, Washington, said car and said whiskey were turned over to the customs officials of the United States and said car is now in the possession of said customs officials at the O. K. Garage in Sumas, Washington, and that as to the disposition of said whiskey this answering defendant knows not.

III.

That said car was so taken and used as herein set

forth without the knowledge, acquiescence, or consent of this answering defendant and that he was and is an innocent party thereto; that he knew nothing about the same in any way and honestly believed that said car was being used in and about Vancouver, B. C., for taxicab purposes only until he learned that it had been seized as herein set forth.

IV.

Deponent further states upon information and belief that neither said car nor said whiskey were at the time set forth in said libel, ever have been or now are merchandise.

WHEREFORE, this answering defendant prays that this answer be considered as herein intended, as the answer of this answering defendant, and for said automobile and that having made, as this answering defendant believes true and correct answer thereto, he prays that said libel be dismissed; that said McLaughlin Touring Automobile, its equipment, accessories, apparel and appurtenances be discharged and turned over and delivered to this answering defendant and that said car be not forfeited and that this answering defendant have such other and further relief and orders as to the Court are just and equitable, meet and proper in the premises.

ANGELO GULARAS,

Defendant.

By COLE & DOLBY,

His Attorneys.

336 New York Block,

Seattle, Washington. [10]

United States of America,
Western District of Washington,
Northern Division,—ss.

Geo. B. Cole, being first duly sworn, on oath deposes and says: That he is one of the attorneys for defendant above named; and makes this verification for and on behalf of the defendant herein for the reason that said defendant is not now within the Western District of Washington, nor the United States of America, but is, as deponent is informed and believes, in Vancouver, B. C., that he has read the foregoing answer to said libel, knows the contents thereof and believes the same to be true.

GEO. B. COLE.

Subscribed and sworn to before me this 30th day of April, 1921.

[Seal]

W. W. DEARBORN,
Notary Public in and for the State of Washington,
Residing at Seattle. [11]

Exhibit "A."

**CONDITIONAL BILL OF SALE.
THESE PRESENTS WITNESS:**

That Alfred Swanson of 458 Hastings St., Vancouver, British Columbia, hereinafter called the Vendor has delivered to Angelo Gularas residing at 1315 Granville St., in Vancouver, British Columbia, hereinafter called the Vendee, the personal property hereinafter described under a contract of

conditional sale. The terms and conditions of which contract of conditional sale are as follows, to wit:

1. Said property is now and shall remain the absolute property of the vendor until after the full and complete payment of the purchase price therefor, which purchase price is the sum of \$2800.00.

2. That the Vendee has this day paid to the Vendor on account of said purchase price, the sum of \$1200.00 the receipt of which is hereby acknowledged.

3. That the balance of said purchase price, to wit: \$1600.00 is evidenced by the following described promissory notes, to wit:

Number	Maker	Date	Due	Amount
1	Angelo Gularas	June 15, 1920	July 18, 1920	\$160.00
2	" "	" " "	Aug. 18, 1920	\$160.00
3	" "	" " "	Sept. 18, 1920	\$160.00
4	" "	" " "	Oct. 18, 1920	\$160.00
A. G. 5	Angelo Gularas	" " "	Nov. 18, 1920	\$160.00
6	" "	" " "	Dec. 18, 1920	\$160.00
7	" "	" " "	Jan. 18, 1921	\$160.00
8	" "	" " "	Feb. 18, 1921	\$160.00
9	" "	" " "	Mar. 18, 1921	\$160.00
10	" "	" " "	Apr. 18, 1921	\$160.00

4. That on full payment of said promissory notes, principal and interest, according to their terms, the title of said property shall vest in said Vendee. . . .

5. The said property and every part thereof at all times while out of the possession of said Vendor. . . . shall be at the risk of said Vendee and all loss or damage of said property or any part thereof shall be borne by said Vendee. . . . and no such loss or damage shall operate to extinguish or diminish

any liability upon said notes or any of them; and said Vendee.... further agree.... to keep the said property insured in a sufficient amount in favor of the said Vendor.... to cover.... interest at all times before the vesting of said title in said Vendee.... by the making of said payments as aforesaid.

6. Said Vendee.... shall at all times while the said property is in the possession of said Vendee have the right to use the same for all uses and purposes for which said property is designed.

7. Possession of said property was taken by said Vendee on the 15th day of June, 1920.

8. Said property is described as follows, to wit: One (1) Seven (7) passenger McLaughlin Automobile Model "H" 49, 1919 [12] Engine number 487067, Serial Number 88020, License Number 17893, together with all equipment.

9. In the event of the Party of the Second part making default in any of the payments herein reserved or failing to perform any of the terms, covenants and conditions of this agreement, then in any such event the party of the First Part shall have the right without process of law, to retake possession of the said automobile, and that such default on the part of the Party of the Second Part shall not operate to extinguish or diminish his liability hereunder, and all payments made shall be forfeited to the Party of the First Part as rent, or as liquidated damages.

10. Each payment hereinabove mentioned is a

condition precedent to the sale and transfer of the one-half interest in the said automobile.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals this 17th day of July, 1920.

Signed, sealed and delivered in the presence of

“ANGELO GULARAS.” Seal

HARRY SHERMAN. Seal. [13]

Exhibit “B.”

THIS AGREEMENT made and entered into this 17th day of July, A. D. 1920,

BETWEEN:

ANGELO GULARAS, residing at 1215 Granville Street, in the City of Vancouver, in the Province of British Columbia.

Hereinafter called the Party of the First Part,

AND:

HARRY SHERMAN, residing at the Balmoral Hotel, in the city and Province aforesaid,

Hereinafter called the Party of the Second Part,

WHEREAS, the Party of the First Part is in possession under a certain Purchase Agreement, of an automobile known and described as one (1) Seven (7) Passenger Automobile, Model “H” 1919, Engine Number 487067, Serial Number 88020, License Number 17893.

AND WHEREAS, the Party of the First Part has agreed with the party of the Second Part to place with the Party of the second part the said automobile for the purpose of operating the same as a taxicab, and the Parties being agreeable subject to the terms, covenants and conditions hereinafter set forth.

THIS AGREEMENT THEREFORE WITNESSETH and the Parties mutually agree as follows:

1. The party of the Second Part shall operate the said automobile as a Taxicab, and shall supply a driver for the same.

2. All expenses of and incidental to the operation, upkeep and repair of the said automobile shall be paid by the party of the Second part.

3. The said automobile shall be kept in continuous use as a Taxicab and for that purpose only.

4. The party of the Second Part shall pay to the party of the First Part the sum of Two Hundred and Seventy-five (\$275.00) dollars on the 17th day of August, 1920, and the sum of Two Hundred Seventy-five (\$275.00) dollars on the 17th days of each and every month thereafter, with a final payment of Two Hundred and sixty-five (\$265.00) *until* the full amount of Three Thousand and Fifteen (\$3015.00) dollars is paid.

5. Upon payment in full of the said sum of Three Thousand and fifteen (\$3015.00) dollars as aforesaid, the Party of the Second Part shall become the owner of one-half interest in the said automobile.

6. Out of each monthly payment as aforesaid the party of the First Part shall pay to the Party of the Second part ten per cent of such monthly payments.

7. The said automobile shall be operated so as to comply with all the requirements of the law and all taxes, fines [14] or other charges shall be paid by the Party of the Second Part and none of these charges shall be paid by the Party of the Second Part, and none of these charges shall or others shall be chargeable against the party of the First Part.

8. The said automobile shall be at the risk of the Party of the Second Part, but each party shall be equally liable for any damages in law arising through collision or accident, providing the same was not caused through the negligence of the party of the first part or his driver.

9. In case default shall be made in the payment of the said promissory notes, or either of them principal or interest, as and when the same shall become due and payable according to their terms, and conditions the vendor.... shall be empowered to take possession of said personal property, with or without process of law, as the said vendor.... they elect and this contract shall be forfeited and determined at the election of the vendor.... and all sums therefore paid by the vendee.... shall be retained by the vendor as rent for the use of said personal property and that such default on the part of the vendee.... shall not operate to extinguish or diminish any liability upon the said notes or any of them.

10. Each payment hereinabove mentioned is a conditional precedent to the sale and transfer of the above described property.

IN WITNESS WHEREOF the parties hereto have hereunto set their HANDS and Seals this 15th day of June, A. D. 1920.

A. D. E. SWANSON.

ANGELO GULARAS.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 2, 1921. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [15]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,893,

Respondent.

ANGELO GULARAS,

Claimant.

Reply.

Comes now the above-named libelant, and replying to the answer of the claimant herein, alleges as follows:

I.

Replying to claimant's further answer, libelant alleges that it is not sufficient information upon which to form a belief as to the truth of the allegations contained in paragraphs I, II, III, and IV of said further answer, and, therefore, denies the same and each and every allegation therein contained.

ROBERT C. SAUNDERS,

United States Attorney,

FRANCIS C. REAGAN,

Assistant United States Attorney,

Attorneys for Libelant.

United States of America,
Western District of Washington,
Northern Division,—ss.

F. C. Reagan, being first duly sworn, on his oath deposes and says: That he is Assistant United States Attorney for the Western District of Washington, and one of the attorneys for the libelant herein; that he makes this verification for and on behalf of said libelant; that he has read the foregoing reply, knows the contents thereof and believes the same to be true.

F. C. REAGAN.

Subscribed and sworn to before me this 6th day of
May, 1921,

[Seal]

F. L. CROSBY, Jr.,
Clerk U. S. District Court. [16]

Receipt of copy of the foregoing reply acknowl-
edged this —— day of May, 1921.

COLE & DOLBY,
Attorneys for Claimant.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. May 7, 1922. F. M. Harshberger, Clerk.
S. E. Leitch, Deputy. [17]

United States District Court, Western District of
Washington, Northern Division.
November Term, 1921.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number, 487,-
067, British Columbia License Number 17,-
893.

Amended Answer to Libel of Information for Forfeiture.

To the Honorable JEREMIAH NETERER, United States District Judge, in and for the Western District of Washington, Sitting in Admiralty in the Northern Division.

Comes now Angelo Gularas, the owner of the McLaughlin Touring Automobile above mentioned and by consent of the Honorable United States Attorney first had, files the following amended answer, and answers the libel of information for forfeiture herein as follows:

I.

Said Angelo Gularas avers, alleges, and shows to this Honorable Court that he was at the time of the seizure of said automobile the owner of an equity in said automobile, and that since the seizure of the same, as in said libel set forth, he has become the absolute owner thereof, and that he deraigns his title thereto as follows:

That on July 17, 1920, at Vancouver, B. C., he entered into a contract in writing with one Alfred Swanson for the purchase of said automobile, agreeing to pay therefor the sum of twenty-eight hundred (\$2800.00) dollars, in installments upon certain dates, all of which was more fully set out in said contract, a copy of which is hereto attached, marked Exhibit "A" and made a part and portion of this answer by reference, the same as though set out *in haec verba* and immediately following. [18]

II.

Answering paragraph I thereof, this answering defendant denies that said McLaughlin Touring Automobile in said libel mentioned is merchandise, and admits the remaining portion of said paragraph.

III.

Answering paragraph II thereof, this answering defendant denies that the automobile therein mentioned was or is merchandise, and as to the remaining allegations therein set forth, has not knowledge or information thereof sufficient to form a belief, and therefore denies each and every other allegation therein contained, save and except such as are hereinafter admitted, or affirmatively alleged.

IV.

Answering paragraph III thereof, this answering defendant denies that the automobile therein referred to, together with its equipment, accessories, apparel, and furniture, was or is merchandise, and as to the remaining allegations therein set forth, has not knowledge or information thereof sufficient to form a belief, and therefore denies each and every other allegation therein contained, save and except such as are hereinafter admitted, or affirmatively alleged.

V.

Answering paragraph IV thereof, this answering defendant denies that the automobile therein referred to, together with its equipment, accessories, apparel, and furniture was or is merchandise, and as to the remaining allegations therein set forth,

has not knowledge sufficient or information thereof sufficient to form a belief, and therefore denies each and every other allegation therein contained, save and except such as are hereinafter admitted or affirmatively alleged.

VI.

Answering paragraph V thereof, this answering defendant denies that the automobile therein referred to, together [19] with its equipment, accessories, apparel, and furniture was or is merchandise, and as to the remaining allegations therein set forth, has not knowledge or information thereof sufficient to form a belief, and therefore denies each and every other allegation therein contained, save and except such as are hereinafter admitted or affirmatively alleged.

VII.

Answering paragraph VI thereof, this answering defendant has not knowledge or information thereof sufficient to form a belief, and therefore denies each and every other allegation therein contained.

FURTHER ANSWERING SAID LIBEL, this answering defendant states:

I.

That on July 17, 1920, he entered into a contract with one Harry Sherman, to purchase from this answering defendant said automobile, which said contract was in writing and the terms of payment and conditions of said contract being fully set forth therein, a copy of which said contract of sale is hereto attached, marked Exhibit "B," and made a part and portion of this amended answer by ref-

erence, the same as though set out *in haec verba*, and immediately following, and that said Sherman immediately took possession of said automobile under and pursuant to the terms and conditions set forth in said Exhibit "B," that he would keep and continuously use the said automobile as a taxicab and for that purpose only, and that it was understood and agreed that said automobile should be used as a taxicab in Vancouver, B. C., only.

II.

Defendant alleges and states upon information and belief that instead of said Sherman using or causing to be used said automobile for taxicab purposes only in and about the city of Vancouver, B. C., that the same was used at the time of the [20] seizure, as set forth in the libel herein, for transporting whiskey or liquor from British Columbia into the United States, and that at the time said automobile was so seized, that it was seized by the sheriff or authorities of Whatcom County, Washington, after said automobile had crossed the international boundary line from British Columbia, into the United States, and that when said car was so seized, as aforesaid, it had therein, and there was being transported from British Columbia into the United States thirteen gunny sacks filled with bottles of Canadian whiskey, and that after the seizure of said car, and said whiskey, by the authorities of Whatcom County, Washington, said car and said whiskey was turned over to the customs officials of the United States, and said car is now in the possession of said customs officials at the O. K. Garage in Sumas,

Washington, and that as to the disposition of the said whiskey, this answering defendant knows not.

III.

That said car was so taken and used as herein set forth without the knowledge, acquiescence, or consent of this answering defendant, and that he was, and is, an innocent party thereto; that he knew absolutely nothing about the same in any way and honestly believed that said car was being used in and about Vancouver, B. C., for taxicab purposes only, until he learned that it had been seized as herein set forth.

IV.

Defendant further states and alleges upon information and belief, that neither said car, its equipment, accessories, apparel or appurtenances or said whiskey were at the time set forth in said libel, or ever, or at all, have been, or now are merchandise.

V.

Claimant further states upon information and belief, that if said automobile was driven from Vancouver, B. C., into the State of Washington, as alleged in the libel herein, or at [21] all, that it was driven into said state for temporary purposes only, and with the purpose and intent of returning said automobile to Vancouver, B. C.

VI.

That if said car was so driven from Vancouver, B. C., into the State of Washington, without entering the same or informing the customs officials thereof, it was done without the knowledge, acquiescence, or consent of claimant, and that said auto-

mobile was so driven into the State of Washington from British Columbia, if at all, only as an instrument of conveyance, and in the prosecution of a temporary journey or visit.

VII.

Claimant further states that said automobile, at the time of its seizure by the said United States, did belong to claimant, who is the owner thereof, and who is entitled to the immediate restitution thereof, and therefore prays for the restitution thereof, as hereinafter set forth.

AND FURTHER ANSWERING SAID LIBEL, this answering defendant or claimant states:

I.

He is informed and believes, therefore alleges the fact to be, that at the time the said automobile was seized by the United States Government, it was being used to carry intoxicating liquor from British Columbia into the State of Washington and for no other purpose, and it was being so used, as herein set forth, without the knowledge, acquiescence, or consent in any manner of this claimant.

WHEREFORE, this answering defendant prays that this answer be considered as herein intended, as the answer of this answering defendant, and for said automobile, its equipment, accessories, apparel, and appurtenances, and that having made, as this answering defendant believes true and correct answers thereto, he prays that said libel be dismissed; that said [22] McLaughlin Touring Automobile, its equipment, accessories, apparel and appurtenances be discharged and turned over and delivered to

this answering defendant, and that said car be not forfeited, and that this answering defendant have such other and further relief and orders as to the Court are just and equitable, meet and proper in the premises.

ANGELO GULARAS,

Claimant.

By COLE and DOLBY,

His Attorneys.

336 New York Block,
Seattle, King County,
Washington.

United States of America,
Western District of Washington,
Northern Division.

Geo. B. Cole, being first duly sworn, on oath deposes and says: That he is one of the attorneys for defendant above named; and makes this verification for and on behalf of the defendant herein, for the reason that said defendant is not now within the Western District of Washington, nor the United States of America, but is as deponent is informed and believes, in Vancouver, B. C., and that he has read the foregoing answer to said Libel, knows the contents thereof and believes the same to be true.

GEO. B. COLE.

Subscribed and sworn to before me this 31st day of October, 1921.

[Seal]

JAMES A. DOUGAN,
Notary Public in and for the State of Washington,
Residing at Seattle. [23]

Exhibit "A."

**CONDITIONAL BILL OF SALE.
THESE PRESENTS WITNESS:**

That Alfred Swanson of 458 Hastings St., Vancouver, British Columbia, hereinafter called the Vendor, has delivered to Angelo Gularas residing at 1215 Granville Street, in Vancouver, British Columbia, hereinafter called the Vendee, the personal property hereinafter described, under a contract of conditional sale. The terms and conditions of which contract of conditional sale are as follows, to wit:

1. Said property is now and shall remain the absolute property of the vendor until after the full and complete payment of the purchase price therefore, which purchase price is the sum of \$2800.00.

2. That the vendee has this day paid to the vendor, on account of said purchase price, the sum of \$1200.00, the receipt of which is hereby acknowledged.

3. That the balance of said purchase price, to wit, \$160.00 is evidenced by the following described promissory notes, to wit:

Number	Maker	Date	Due	Amount	
1	Angelo Gularas	June 15, 1920	July 18, 1920	\$160	\$15 ins.
2	"	"	Aug. 18, 1920	\$160	" "
3	"	"	Sept. 18, 1920	\$160	" "
A. G. 4	"	"	Oct. 18, 1920	\$160	" "
5	"	"	Nov. 18, 1920	\$160	" "
6	"	"	Dec. 18, 1920	\$160	" "
7	"	"	Jan. 18, 1921	\$160	" "
8	"	"	Feb. 18, 1921	\$160	" "
9	"	"	Mar. 18, 1921	\$160	" "
10	"	"	Apr. 18, 1921	\$160	" "

4. That on full payment of said promissory notes, principal and interest, according to their terms, the title of said property shall vest in said vendee.

5. The said property and every part thereof at all times while out of the possession of said vendor, shall be at the risk of said vendee, and all loss or damage of said [24] property or any part thereof shall be borne by said vendee and no such loss or damage shall operate to extinguish or diminish any liability upon said notes or any of them; and said vendee further agrees to keep the said property insured in a sufficient amount in favor of said vendor to cover interest at all times before the vesting of said title in said vendee, by the making of said payments as aforesaid.

6. Said vendee shall at all times while the said property is in the possession of said vendee have the right to use the same for all uses and purposes for which said property is designed.

7. Possession of said property was taken by said vendee on the 15th day of June, 1920.

8. Said property is described as follows, to wit:

One (1) seven (7) passenger McLaughlin Automobile, Model "H" 49, 1919, Engine number 487,067, Serial number 88,020, License number 17,893, together with all equipment.

9. In case default shall be made in the payment of said promissory notes, or either of them, principal or interest, as and when the same shall become due and payable according to their terms and conditions, the vendor shall be empowered to take possession of the said personal property, with or without pro-

cess of law, as the said vendor may elect, and this contract shall be forfeited and determined at the election of the vendor, and all sums therefor paid by the vendee shall be retained by the vendor, as rent for the use of said personal property, and that such default on the part of the vendee shall not operate to extinguish or diminish any liability upon the said notes or any of them.

10. Each payment hereinabove mentioned is a condition precedent to the sale and transfer of the above described property.

IN WITNESS WHEREOF, *that* parties hereto have hereunto set their hands and seals this 15th day of June, A. D. 1920.

A. D. E. SWANSON. (Seal)

ANGELO GULARAS. (Seal)

J. D. McPHEE. [25]

Exhibit "B."

THIS AGREEMENT made and entered into this 17th day of July, A. D. 1920.

BETWEEN:

ANGELO GULARAS, residing at 1215 Granville Street in the City of Vancouver, in the Province of British Columbia,

Hereinafter called the party of the First Part,

AND:

HARRY SHERMAN, residing at the Balmoral Hotel, in the City and Province aforesaid,

Hereinafter called the Party of the Second Part.

WHEREAS, the party of the first part is in pos-

session, under a certain Purchase Agreement, of an automobile, known and described as One (1) Seven (7) Passenger Automobile, Model "H" 49, 1919, Engine Number 487,067, Serial Number 88,020, License Number 17, 893.

AND WHEREAS, the party of the first has agreed with the party of the second part to place with the party of the second part the said automobile for the purpose of operating the same as a taxicab, and the parties being agreeable subject to the terms, covenants and conditions hereinafter set forth.

THIS AGREEMENT THEREFORE WITNESSETH that the parties mutually agree as follows:

1. The party of the second part will operate the said automobile as a taxicab, and shall supply a driver for same.

2. All expenses of and incidental to the operation upkeep and repair of the said automobile shall be paid by the party of the second part.

3. The said automobile shall be kept in continuous use as a taxicab, and for that purpose only.

4. The party of the second part shall pay to the party of the first part, the sum of Two Hundred and Seventy-five [26] (\$275.00) dollars on the 17th day of August, 1920, and the sum of Two Hundred and seventy-five (\$275.00) dollars on the 17th days of each and every month thereafter, with a final payment of two hundred and sixty-five dollars (\$265.00), until the full amount of Three Thousand and fifteen (\$3015.00) Dollars is paid.

5. Upon payment in full of the said sum of Three thousand and fifteen (\$3015.00) Dollars as aforesaid, the party of the second part shall become the owner of a one-half interest in the said automobile.

6. Out of each monthly payment as aforesaid the party of the first part shall pay to the party of the second part ten per cent (10%) of such monthly payments.

7. The said automobile shall be operated so as to comply with all the requirements of the law, and all taxes, fines or other charges shall be paid by the party of the second part, and none of these charges shall or others shall be chargeable against the party of the first part.

8. The said automobile shall be at the risk of the party of the second part, but each party shall be equally liable for any damages in law arising through collision or accident, providing the same was not caused through the negligence of the party of the second part, or his driver.

9. In the event of the party of the second part making default in any of the payments herein reserved or failing to perform any of the terms, covenants, and conditions of this agreement, then in any such event, the party of the first part shall have the right without process of law, to retake possession of said automobile, and that such default on the part of the party of the second part shall not operate to extinguish or diminish his liability hereunder, and all payments made shall be forfeited to the party of the first part as rent, or as liquidated damages. [27]

10. Each payment hereinabove mentioned is a condition precedent to the sale and transfer of the one-half interest in the said automobile.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 17th day of July, 1920,

Signed, sealed and delivered in the presence of

ANGELO GULARAS. (Seal)

HARRY SHERMAN. (Seal)

Received a copy of the within amended libel this 31st day of October, 1921.

THOS. P. REVELLE,

Attorney for Libelant.

By E. D. DUTTON.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 31, 1921. F. M. Harshberger. S. E. Leitch. [28]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Demurrer.

Comes now the above-named libelant, by Thomas P. Revelle, United States Attorney for the Western District of Washington, and John A. Frater, Assistant United States Attorney for said district, and demurs to the further answers of Angelo Gularas, for the reason that said further answers do not constitute a defense to this action.

THOMAS P. REVELLE,
United States Attorney.

JOHN A. FRATER,
Assistant United States Attorney.

Received copy of foregoing demurrer this November 29, 1921.

COLE & DOLBY.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 30, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [29]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Findings of Fact and Conclusions of Law.

This cause heretofore coming on regularly for trial in open court, libelant appearing by John A. Frater, Assistant United States Attorney, and claimant, Angelo Gularas, appearing by J. D. McPhee and Geo. B. Cole, of Cole & Dolby, and said cause having been tried and submitted to the Court for its decision, and the Court being advised in the premises, makes the following

FINDS OF FACT.**I.**

The McLaughlin touring automobile above mentioned and referred to in this cause of action was on and prior to June 15th, 1920, owned by one Alfred Swanson, and that on said June 15th, 1920, said Swanson sold this automobile under conditional sale contract to Angelo Gularas, claimant herein, and that subsequently said Angelo Gularas made all of said deferred payments, and now is the owner of said automobile; thereafter and on July 17th, 1920, said Angelo Gularas entered into a contract in writing with one Harry Sherman, whereby said Sherman agreed to run and operate or cause to be run and operated said automobile as a taxicab, and for that purpose only, in Vancouver, British Columbia, and that said Alfred Swanson, said Angelo Gularas, [30] Claimant herein, and said Harry Sherman, are each and all Canadian subjects and residents of Vancouver, British Columbia.

II.

That said Harry Sherman delivered said automo-

bile to one Jim Roberts, *alias* Rogers, to drive as a taxicab in the city of Vancouver, B. C., and that said Roberts instead of continuing to so drive said automobile as a taxicab and for taxicab purposes only, placed or caused to be placed in said automobile on or about October 1st, 1920, thirteen (13) gunny sacks filled with bottles of Canadian whiskey, and said automobile with said whiskey was driven into the State of Washington from British Columbia on or about said October 1, 1920, and said Roberts did not report the arrival of said automobile into the United States, or make any entry of such arrival with the customs officials of said Customs Collection District, or with any customs officers whatsoever, nor did he pay any customs or duty upon said automobile, and on or about October 1, 1920, was arrested by the Sheriff of Whatcom County, Washington, and said automobile and whiskey seized by said sheriff, and that said automobile was thereafter and on November 6, 1920, by said sheriff, turned over to and seized by the customs officials in the customs collection district of Washington, and held by them on a claim that the same was not entered or declared when it came into the State of Washington, and the United States of America.

III.

That at the time said automobile was seized as aforesaid, it was being used to carry prohibited intoxicating liquor from British Columbia into the State of Washington, and for no other purpose, and said automobile was so driven into the State of

Washington from British Columbia only as an instrument of conveyance [31] for temporary purposes, and only in the prosecution of a temporary journey or visit, and with the purpose and intent of returning said automobile to Vancouver, British Columbia, all of which was done without the knowledge, acquiescence or consent in any manner of claimant, who is an innocent party, and in no way connected with either said automobile coming within the United States or its transportation of liquor, and that said claimant knew absolutely nothing about the same in any way, and honestly believed that said automobile was then and there being used in and about Vancouver, British Columbia, for taxicab purposes only, until he learned that it had been seized by the Deputy Collector of Customs, of the United States.

IV.

That said automobile, together with its equipment, accessories, apparel and furniture is not, and at the time of its entry into the United States of America, as well as at the time of its seizure as aforesaid, was not merchandise, and that said automobile was wrongfully seized by the United States Government officials, and that forfeiture of the same should not be had.

To all of which libellant excepts and an exception is allowed.

Done in open court and dated at Seattle, Washington, this 24th day of January, 1922.

EDWARD E. CUSHMAN,

Judge.

From the foregoing FINDINGS OF FACT the Court concludes as follows:

CONCLUSIONS OF LAW.

I.

That the automobile referred to herein is not subject [32] to forfeiture under Section 3082 Revised Statutes of the United States, or at all; that claimant, Angelo Gularas, is an innocent owner of said automobile, and not connected in any way with the bringing of said automobile into the United States, which said car was brought into the United States without the knowledge, acquiescence or consent of said claimant, Angelo Gularas, and that at the time said automobile crossed the International Boundary line from British Columbia, Canada, into the United States of America, and into the State of Washington, said Angelo Gularas, claimant herein, honestly believed that said automobile was being run and operated as a taxicab and for that purpose only in the city of Vancouver, British Columbia, and that the said Angelo Gularas was innocent of any wrong or wrongdoing in the premises.

II.

That as said automobile was engaged in the importation of prohibited alcoholic liquor at the time of its seizure in the United States, it was not engaged in the importing of any merchandise, and was and is not subject to forfeiture under the customs law of the United States.

III.

That said automobile, together with its equip-

ment, accessories, apparel, and furniture is not, and at the time of its entry into the United States of America, as well as at the time of its seizure as aforesaid, was not, merchandise, and that said automobile was wrongfully seized by the United States Government officials and that forfeiture of the same should not be had, and that said automobile should be delivered to claimant, Angelo Gularas, free of costs and charges.

To all of which libellant excepts and exception is allowed.

Done in open court this January 24, 1922,

EDWARD E. CUSHMAN,

Judge. [33]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 24, 1922. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [34]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Order and Decree.

THIS cause heretofore coming on regularly for trial, Honorable John A. Frater, Assistant United States Attorney, appearing for and on behalf of libelant, and J. D. McPhee and Geo. B. Cole, of Cole & Dolby appearing for and on behalf of claimant, Angelo Gularas, and the Court having heretofore made its FINDINGS OF FACT and CONCLUSIONS OF LAW, and being fully advised in the premises,—

IT IS ORDERED, ADJUDGED and DECREED that the information of libel for forfeiture herein be, and the same hereby is dismissed with prejudice, and that said automobile be forthwith restored and delivered by the United States Marshal and customs officials to Angelo Gularas, claimant herein, or his representatives or attorneys, free and clear from any claims of any nature for storage or otherwise, or for costs of said marshal or customs officials.

To all of which libelant excepts and an exception is allowed.

Done in open court this January 24, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 24, 1922. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [35]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License No. 17,893.

Order Fixing Bond and Release of Automobile.

The above matter coming on regularly to be heard in open court on January 27th, 1922, Honorable John A. Frater, Assistant United States Attorney appearing on behalf of United States, Geo. B. Cole, of Cole & Dolby, appearing on behalf of Claimant, Angelo Gularas, on the application of claimant that the Court fix the bond upon the giving of which said automobile is to be released, and the Court after argument of counsel and being fully advised in the premises,—

ORDERS, that said McLaughlin Touring Automobile, Serial No. 514,874, Engine No. 487, 067, British Columbia License No. 17,893 (for 1921), be released unto said Angelo Gularas upon said Gularas executing a bond to be approved by this Court, in the sum of \$500.00, payable to the United States of America, libellant herein.

Done in open court this 31st day of January,
1922.

EDWARD E. CUSHMAN,
Judge.

O. K. as to form.

JOHN A. FRATER,
Asst. U. S. Atty.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Jan. 31, 1922. F. M. Harshberger, Clerk.
S. E. Leitch, Deputy. [36]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Notice of Appeal.

To COLE & DOLBY and J. D. McPHEE, Proctors
for Claimant Angelo Gularas, and to F. M.
HARSHBERGER, Esquire, Clerk of the
United States District Court for the Western
District of Washington:

PLEASE TAKE NOTICE that the libelant above

named, United States of America, hereby appeals from the final decree and order made and entered herein on the 24th day of January, 1922, dismissing with prejudice said libel, and ordering the return of the automobile claimed to claimant Angelo Gularas, to the next United States Circuit Court of Appeals for the Ninth Circuit to be holden in and for said circuit at the city of San Francisco, California.

Dated this 23d day of February, 1922.

THOMAS P. REVELLE,
Assistant United States Attorney.

JOHN A. FRATER,
United States Attorney.

Service accepted this 23d day of February, 1922.

J. D. McPHEE and
COLE & DOLBY,

Proctors for Claimant Angelo Gularas.

[Endorsed]: Filed in the U. S. District Court,
Western District of Washington, Northern Division.
Feb. 23, 1922. F. M. Harshberger, Clerk. S. E.
Leitch. [37]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number, 487,-
067, British Columbia License Number 17,-
893.

Petition for Appeal.

To the Honorable EDWARD E. CUSHMAN, District Judge:

The above-named libelant, United States of America, feeling itself aggrieved by the decree rendered and entered in the above-entitled cause on the 24th day of January, 1922, wherein and whereby the libel of libelant was dismissed and whereby the automobile claimed was ordered returned to the claimant, Angelo Gularas, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, with the object of obtaining a reversal of the same, for the reasons and upon the grounds specified in the assignment of errors which is filed herewith. The libelant prays that this appeal may be allowed, that citation be issued as provided by law, and that a transcript of the record and proceedings upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit within the time and in the manner agreeable to the subsisting rules promulgated by said court.

Dated this 23d day of February, 1922.

THOMAS P. REVELLE,

United States Attorney.

JOHN A. FRATER,

Assistant United States Attorney.

Received a copy of the above petition for appeal this 23d day of February, 1922.

J. D. McPHEE and
COLE & DOLBY,

Proctors for Claimant and Appellee, Angelo Gularas. [38]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 23, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [39]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487-
067, British Columbia License Number 17,-
893.

**Assignment of Errors on Appeal of the United
States.**

Comes now the United States of America, having prayed for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree in the above-entitled United States District Court for the Western District of Washington, made and entered on the 24th day of January, 1922,

wherein and whereby the amended answer and claim of claimant Angelo Gularas to the libel of information in said cause was sustained, and the said libel of information dismissed, makes and files the following assignment of errors, upon which it will rely upon its prosecution of the appeal herein, and does hereby assign that the above-entitled United States District Court erred in the following particulars:

I.

That the United States District Court for the Western District of Washington erred in making and entering said decree made and entered on the 24th day of January, 1922.

II.

That said District Court erred in overruling the allowing the answer and claim of claimant Angelo Gularas to the libel of information in said cause and in dismissing said libel of informaton. [40]

III.

That said District Court erred in overruling the demurrer of the libelant to the further answers of the claimant, Angelo Gularas.

IV.

That the said District Court erred in holding and deciding in substance and effect that the libelant or any of its officers had no right to the possession of said automobile referred to in said libel of information and claimed by said Angelo Gularas, or any right to detain or forfeit the same.

V.

That said District Court erred in failing and refusing to make and enter a decree forfeiting the

said automobile described in said libel of information.

VI.

That said District Court erred in making and entering its order and decree for the return and delivery of said autotmobile to said claimant, Angelo Gularas.

WHEREFORE, the appellant, United States of America, prays that said decree be reversed and that said District Court for the Western District of Washington be directed to reverse and set aside said decree and to enter a decree forfeiting said automobile to the United States.

Dated this 23d day of February, 1922.

THOMAS P. REVELLE,

United States Attorney.

JOHN A. FRATER,

Assistant United States Attorney.

Received a copy of the above assignment of errors on this 23d day of February, 1922.

J. D. McPHEE and

COLE & DOLBY,

Attorneys for Claimant and Appellee, Angelo Gularas. [41]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 23, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [42]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Order Allowing Appeal.

On motion of Thomas P. Revelle, United States Attorney for the Western District of Washington, proctor for libelant, United States of America, and on filing the petition of said libelant for an order allowing an appeal, together with notice of appeal, assignment of error and a prayer for the reversal of the decree filed and entered in said cause on the 24th day of January, 1922, it is hereby

ORDERED, that an appeal be, and is hereby, granted and allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree filed and entered herein on the 24th day of January, 1922, sustaining the amended answer of the claimant, Angelo Gularas, to the libel of information herein and dismissing the said libel of information; and it is hereby

FURTHER ORDERED, that a transcript of the record, proceedings, documents and pleadings, find-

ings of fact and conclusions of law and decree, duly authenticated and certified, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit. [43]

Dated this 23d day of February, 1922.

EDWARD E. CUSHMAN,
United States District Judge.

Received a copy of the within order allowing appeal on this 23d day of February, 1922.

J. D. McPHEE and
COLE & DOLBY,

Proctors for Claimant and Appellee, Angelo Gularas.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 23, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [44]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number, 514,874, Engine No. 487,067,
etc.

**Order Extending Time in Which to Prosecute an
Appeal.**

Upon motion of the United States Attorney,—

It is hereby ORDERED, ADJUDGED AND DECREED that the time in which the United States may prosecute its appeal herein as hereby extended twenty days from February 3d, 1922,

Done in open court this 1st day of February, 1922.

EDWARD E. CUSHMAN,

Judge.

O. K.—J. D. McPHEE and

COLE & DOLBY,

Attorneys for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 2, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [45]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Order Extending Time to File Bill of Exceptions.

BE IT REMEMBERED, that this matter came on duly and regularly, and it appearing to the Court that good cause has been shown why the time for filing the bill of exceptions on appeal may be extended therefore, it is hereby

ORDERED AND ADJUDGED that the time for filing the bill of exceptions on appeal may be extended to a day thirty days from and after the entry of this order.

Done in open court this 20th day of March, 1922.

EDWARD E. CUSHMAN,

Judge.

O. K.—COLE & DOLBY,

Proctors for Claimant and Libellant, Angelo Gularas.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. March 20, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [46]

United States District Court, Western District of Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libellant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

**Order Extending Time to File Record on Appeal in
Circuit Court of Appeals.**

BE IT REMEMBERED, that this matter came on duly and regularly before this Court, and it appearing to the Court that good cause has been shown why the time for filing record on appeal with the Circuit Court of Appeals should be extended, now, therefore, it is hereby

ORDERED AND ADJUDGED that the date and time for filing the record on appeal with the Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, be extended for a period of thirty days from and after the date of entry of this order.

Done in open court this 20th day of March, 1922.

EDWARD E. CUSHMAN,
Judge.

O. K.—COLE & DOLBY,
Proctors for Claimant and Libellant, Angelo Gularas

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. March 20, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [47]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN AUTOMOBILE, Serial No.
514,874, Engine No. 487,067, B. C. License
No. 17,893,

Respondent.

Order Extending Time for Settling Bill of Exceptions and Filing Record.

Upon motion of the United States Attorney, it is hereby

ORDERED that the time for settling the bill of exceptions in the above-entitled cause and for filing the record in the Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended for a period of twenty days from this date.

Done in open court this 18th day of April, 1922.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. April 18, 1922. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [48]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License No. 17,893.

Respondent.

ANGELO GULARAS,

Claimant.

Bill of Exceptions.

BE IT REMEMBERED that this cause came on regularly for trial on January 18th, 1922, the United States appearing by its District Attorney, and the Claimant, Angelo Gularas, appearing by his attorney, and thereupon the following proceedings were had, to wit:

Without any testimony being adduced it was admitted in open court by the claimant that the automobile in question,—one McLaughlin touring automobile, Serial Number 514,874, Engine Number 487,067, British Columbia License No. 17,893, on or about October 2d, 1920, was imported and brought into the United States by one John Doe Rogers, *alias* Jim Roberts, from British Columbia. And it was further admitted by the claimant that no report of the entry of said automobile into the United States

was made to the proper office or officials of the United States Customs Department, or to any officer or official of the United States Customs Department; and it was further admitted that the said John Doe Rogers, [49] *alias* Jim Roberts, at the time of the entry of the said automobile into the United States and at the time of its arrival into the United States, did not pay or secure to be paid any customs duties due and assessable against and upon said automobile, or any duties whatsoever in connection with the importation thereof, and that at the time of the importation of said automobile no customs duties due or assessable against and upon said automobile had been theretofore paid or secured to be paid to the United States. It was further admitted that the said John Doe Rogers, *alias* Jim Roberts received, concealed and transported, and aided in the concealment and transportation, of the said automobile within the jurisdiction of the said District Court in Whatcom County, Washington, knowing the said automobile to have been imported into the United States without any report of its arrival therein having been made, as required by law, and without any customs duties due or assessable against and upon said automobile having been paid or secured to be paid to the United States. It was also admitted by the claimant that the said automobile, on or about November 6th, 1920, had been seized by a deputy collector of customs in the jurisdiction of said District Court; that the said automobile at the time of trial was in the jurisdiction of the said District Court; and that the same had been ap-

praised in the amount of \$1700.00. It was further admitted by claimant that the said automobile was manufactured at Oshawa, in the Province of Ontario, Dominion of Canada.

It was admitted by the Government that if the claimant were present he would testify that on June 17, 1920, the automobile in question was owned by one Swanson; that on that date he entered into an agreement in writing with the claimant whereby the claimant [50] agreed to purchase the automobile in question under contract making a certain payment down and certain other payments on specified dates, which contract is dated June 15, 1920, and was filed for record in the recorder's office in Vancouver, B. C., on June 17, 1920. It was further admitted by the Government that if the claimant were present he would testify that the claimant since the making of said contract had fully performed the same and made all payments due thereunder to the vendor; that on July 17, 1920, claimant entered into a contract with one Sherman whereby the claimant leased or rented to the said Sherman the said automobile upon certain conditions, which said contract contained a clause providing for the purchase by the said Sherman under certain conditions of the said automobile; that the contract further provided that Sherman was to use the automobile for taxicab purposes only in the city of Vancouver, B. C.; that the contract with Sherman was recorded on July 20, 1920, in Vancouver, B. C.; that the contract with Sherman further provided that Sherman "shall operate the said automobile as a taxicab

and shall supply a driver for same"; that the contract further provided "that the said automobile shall be kept in continuous use as a taxicab and for that purpose only"; that the contract further provided that "the said automobile shall be operated so as to comply with all the requirements of the law and all taxes, fines or other charges shall be paid by the party of the second part (Sherman) and none of these charges or others shall be chargeable against the party of the first part (claimant)." That the said Sherman employed as a driver for said taxicab the said John Doe Rogers, *alias* Jim Roberts, and that the said Rogers, *alias* Roberts, on or about October 2d, 1920, loaded said taxicab with approximately 13 gunny sacks [51] of Canadian whiskey and came across the line from British Columbia into the State of Washington at some point near Sumas, Washington; that the driver of the taxicab was employed by Sherman, and that the driver's name was not known to claimant; that after Rogers, *alias* Roberts, had entered the United States with the automobile loaded with whiskey he was arrested in Whatcom County, Washington.

It was further admitted by the Government that if the claimant were present he would testify that the claimant was at all times an innocent party and knew nothing of the transaction involving the importation of the automobile or the whiskey into the United States, and that the agreement between claimant and Sherman was entered into in good faith; that the said automobile was taken and used as aforesaid without the knowledge, acquiescence or

consent of claimant; that he knew absolutely nothing about the same in any way and honestly believed the said automobile was being used in and about the city of Vancouver, B. C., for taxicab purposes only, until he learned that it had been seized as aforesaid. That the importation or bringing into the United States of the said automobile without entering the same or informing the customs officers thereof was done without the knowledge, consent or acquiescence of claimant. It was further admitted by the Government that if the claimant were present he would testify that the claimant was the owner of said automobile, and further, that the said Swanson, Sherman and claimant are all Canadian subjects and residents of Vancouver, B. C.

Thereupon, claimant offered in evidence the said conditional bill of sale from Alfred Swanson to claimant, the agreement or contract between claimant and the said Sherman, and a letter from the sheriff of Whatcom County, Washington, relative to the arrest, [52] conviction and sentence imposed by the State of Washington upon the said Rogers, *alias* Roberts, in connection with the illegal possession of intoxicating liquor. The offer was objected to on the part of the Government, for the reason that the exhibits offered were incompetent, irrelevant and immaterial, and offered no defense to the libel of information or the cause of action pleaded therein; for the further reason that the libel of information was predicated upon the failure to report to the customs officers the arrival and importation of said automobile, the said automobile being duti-

able merchandise, and that the question of whether or not said automobile contained intoxicating liquor was immaterial, under the cause of action pleaded; and for the further reason that the libel of information was predicated upon sections 3082, 3098 and 3099, Revised Statutes of the United States, under which statutes the question of the innocence of the owner of the automobile or of his lack of participation in the importation of the automobile was incompetent, irrelevant and immaterial; and for the further reason that the innocence or lack of any intent to defraud on part of claimant was no defense to the cause of action pleaded in the libel of information.

The objection was overruled by the Court and the exhibits offered were admitted; the conditional bill of sale from Swanson to claimant being marked Defendant's Exhibit "A"; the agreement between claimant and said Sherman being marked Defendant's Exhibit "B"; and the letter from the sheriff of Whatcom County, Washington, being marked Defendant's Exhibit "C"; to which ruling of the Court an exception was taken by the Government, and the exception was allowed. [53]

Thereupon, the following proceedings were had:

"Mr. FRATER.—In view of your Honor's position, may I again raise my objection to this letter from Whatcom County, which has to do with the arrest of the man who brought this liquor, and his prosecution in the State Court. Surely that has no part in this action. That is independent of any claim of lawful ownership on the part of the claimant Mr. Gularas.

The COURT.—It might be considered this way. You are asking the Court to consider the opportunities for collusion, and it certainly shows that if there was collusion between the driver and the owner and the man operating the taxicab man it shows that one of them at least was not gaining any advantage by this collusive agreement. I will allow it to go in.

It seems to me the ground of my ruling in the other case would seem to apply here, that so far as the innocent owner of property on the other side is concerned that the law of nations probably applies and modifies the customs law. I am not particularly excited about our Canadian brethren over there and their property, but I do not want to lay down a rule of action here that will invite the authorities on the other side, when somebody steals an automobile from a citizen of the State of Washington and goes over there on some illegal errand that they are going to say that those that live by the sword can die by the sword and forfeit our property and that of our citizens [54] on a technical violation of any law. I think it is the duty of the Court to adopt a liberal policy regarding the innocent owners of property on the other side that have been put in a position where they have lost their properties and been jeopardized by the illegal act of some one for whom they are not responsible. I still feel the same way.

“Mr. FRATER.—Well, your Honor, I want to note an exception to your Honor’s ruling in admitting these exhibits, and then call your Honor’s attention to the fact that your reference to the fact that if some one stole an automobile—now, that is

a very different situation than obtains in this case, and there are decisions, in fact the rules of the Customs Department provide against the seizure, they will return a car upon proof that it has been stolen. I just call your Honor's attention to that. That is a very different situation than what obtains here.

"The COURT.—I know that in the Internal Revenue they have gone a great ways, and under the rules that you invoked a while ago, where two innocent parties may suffer, the one that enabled the misconduct to be brought about would be the one to suffer. Now, that may be all right in the Internal Revenue, our citizens can't get away from a harsh rule of that kind, but to hang that rule out over the border and have it forfeit the property of innocent parties subject of another nation, I am not going to extend the time. Make your record here and let it be reviewed. The sooner it is reviewed the better, because with the pressure there is in [55] getting the liquor into this country now there will be a temptation to take advantage of a liberal rule like this and the law. The sooner it is finally settled the better, because it will be coming up hereafter undoubtedly, so you can finish this record as soon as you can."

* * * * *

"The COURT.—Well, I suppose your exhibits show the length of time it had been used as a taxicab. A second-hand vehicle may be merchandise if it is brought into the country for the purpose of being sold. At the same time, a vehicle that is being

used as a vehicle for the transportation of other articles, be they merchandise or be they contrabrand, if it is used as a vehicle to bring them into the country with the idea of turning around again and going out of the country, why, there is no question whether that vehicle is merchandise, just along the same lines that the court reasons that a ship that is carrying cargo is not itself merchandise.

I have decided this case on the idea that this was not a new automobile simply being driven over here to be sold again as a new automobile on this side, but was being used just as the arguments and exhibits indicate, a taxicab embezzled by a driver and used on some night hawking trip to bring whiskey over into this country with the idea of going back and bringing some more over.

Mr. COLE.—Yes, and taken over on its own power.

Mr. FRATER.—I do not believe that the fact that an automobile, or any other instrument, for that matter, or conveyance, because it is propelled on its own wheels or under its own [56] power, that that relieves it of the characteristic of merchandise.

The COURT.—If it is being brought over here under its own power with the idea of being sold on this side or retained here permanently by the owner on this side, why, it is merchandise. I do not think there is any question about it. But if it is just temporarily coming across the line with the idea of returning particularly where it is in the hands of someone who has embezzled it, I doubt whether it

is merchandise in the meaning of that statute.”

BE IT FURTHER REMEMBERED that on the 24th day of January, 1922, the Court made its findings of fact and conclusions of law, and on the same date entered an order and decree wherein it was ordered that the said libel of information was dismissed with prejudice, and that the automobile in question was forthwith restored and delivered by the United States marshal to the claimant free and clear from any liens of any nature for storage or otherwise or for costs of said marshal or the customs officers in connection with the seizure of the same, to which findings of fact, conclusions of law, and said order and decree, the Government excepted, and its exceptions were allowed.

On March 20, 1922, an order was made and duly entered in this case to the effect that the time within which to file and serve and have certified the bill of exceptions be, and by the said order was, extended to and including April 19, 1922, and on the 18th day of April, 1922, a further order was duly made and entered extending the time within which to file and [57] serve and have certified the bill of exceptions in said case to and including the 8th day of May, 1922.

United States of America,
Western District of Washington,
Northern Division,—ss.

I, Edward E. Cushman, the Judge of the District Court of the United States for the Western District of Washington, Northern Division, before whom the above-entitled cause was tried, do hereby certify that

the matters and proceedings set forth in the foregoing bill of exceptions are matters and proceedings which occurred on the trial of said cause, and the same hereby are made part of the record herein; counsel for the respective parties hereto being present and concurring herein.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of May, 1922, at Seattle, in said District.

EDWARD E. CUSHMAN,
Judge.

O. K.—COLE & DOLBY,
By GEO. B. COLE,
Atty. for Claimant.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 1, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [58]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,
Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Praecipe for Transcript of Record.

To F. M. Harshberger, Clerk of the Above-entitled Court:

Kindly prepare, certify and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, a typewritten transcript of the record on appeal in the above-entitled cause, containing the following portions of the record in the above-entitled cause, to wit:

1. Libel of information for forfeiture.
2. Appearance of Angelo Gularas.
3. Answer to libel.
4. Reply.
5. Amended answer to libel.
6. Demurrer.
7. Findings of fact and conclusion of law.
8. Order and decree.
9. Order fixing bond and release of automobile.
10. Notice of appeal.
11. Petition for appeal.
12. Assignment of errors.
13. Order allowing appeal. [59]
14. Citation on appeal.
15. Order extending time in which to appeal, dated Feb. 1st, 1922.
16. Order extending time to file bill of exceptions, Mar. —, 1922.
17. Order extending time to file record on appeal in Circuit Court, Mar. —, 1922.
18. Order extending time for settling bill of exceptions and filing record.

19. Bill of exceptions.

20. Copy of this praecipe.

Dated at Seattle, Washington, May 4, 1922.

THOMAS P. REVELLE,

United States Attorney.

JOHN A. FRATER,

Assistant United States Attorney.

Service of the within praecipe is hereby admitted
this 4th day of May, 1922.

COLE & DOLBY,

Attorneys for Claimant.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

THOMAS P. REVELLE,

United States Attorney.

JOHN A. FRATER,

Assistant United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 4, 1922. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [60]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 60, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of the appellant for making record, certificate of return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:
[61]

Clerk's fees (Sec. 828, R. S. U. S.)	
for making record, certificate or	
return, 150 folios at 15c	\$22.50
Certificate of Clerk to transcript of	
record, 4 folios at 15c60
Seal to said certificate20

I hereby certify that the above costs for preparing and certifying recording, amounting to \$23.30, will be included in my quarterly account to the Government, of fees and emoluments for the quarter ending June 30, 1922.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 5th day of May, 1922.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [62]

United States District Court, Western District of
Washington, Northern Division.

No. 5699.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE McLAUGHLIN TOURING AUTOMOBILE,
Serial Number 514,874, Engine Number 487,-
067, British Columbia License Number 17,-
893.

Citation on Appeal.

The United States of America,—ss.

To Angelo Gularas, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California, within thirty days from date hereof, pursuant to an appeal filed in the office of the clerk of the United States District Court in and for the Northern Division of the Western District of Washington, wherein the United States of America is appellant, and Angelo Gularas is appellee, to show cause, if any there be, why the decree of said Court, signed, filed and entered on the 24th day of January, A. D. 1922, sustaining the exceptions of said Angelo Gularas to the libel of information and dismissing the said libel of information as mentioned in said order allowing an appeal, should not be reversed, modified or corrected and why speedy jus-

tice should not be done to the parties in that behalf.
[63]

WITNESS the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington, this 23d day of February, A. D. 1922.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington.

Due service of the within citation on appeal is hereby admitted and acknowledged on behalf of the appellee, Angelo Gularas, this 23d day of February, 1922.

J. D. McPHEE and
COLE & DOLBY,
Proctors for Claimant and Appellee, Angelo Gularas.

[Endorsed]: No. 5699. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Libelant, vs. One McLaughlin Touring Automobile, Serial Number 514,874, Engine Number 487,067, British Columbia License Number 17,893. Citation on Appeal. Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 23, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [64]

[Endorsed]: No. 3871. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Angelo

Gularas, Claimant of One McLaughlin Touring Automobile, Serial Number 514,874, Engine Number 487,067, British Columbia License Number 17,893, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 8, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.